

This letter discusses claims for credit when a retailer has collected sales tax on a sale for resale. See 86 Ill. Adm. Code 130.1401 and 150.1501. (This is a GIL.)

December 16, 2005

Dear Xxxxx:

This letter is in response to your letter dated June 22, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

The above named taxpayer has asked us to request an Illinois Private Letter Ruling pursuant to 86 Ill Adm. Code Section 1200.110. As the taxpayers' representative, we have prepared this request under powers of attorney, copies of which are enclosed. The taxpayer respectfully requests that you issue a ruling in favor of their deducting Illinois sales tax paid from gross receipts for purposes of computing the sales tax payable on the Form ST-1.

GENERAL INFORMATION

Pursuant to the requirements of 86 Ill Adm. Code Section 1200.110(b) paragraphs 1 through 8, the taxpayer hereby represents the following:

1. The taxpayer is unaware of any pending audits or litigation with the Department. The taxpayer is not involved in ongoing audits or litigation with respect to this tax issue.
2. To the best of the knowledge of the taxpayer and the taxpayer's representatives, the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, nor has the taxpayer or any representatives

previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

3. The taxpayer requests that the following information be deleted from the PLR prior to public dissemination: Name and address, the individuals carbon copied and the undersigned representative, and the identification number.
4. There is no specific trade secret information taxpayer requests be deleted from the publicly disseminated version of the private letter ruling.

MATERIAL FACTS PERTAINING TO THE REQUESTED RULING

The taxpayer purchases optical devices (eyeglasses and contact lenses) from various suppliers with the intent of reselling these devices to optometrists or ophthalmologists who will sell the goods to the end user, the individual requiring the eyewear. In each case, the taxpayer provides the supplier with a resale certificate. However, in some cases, the supplier does not honor the resale certificate, and charges the taxpayer sales tax on the initial transaction. Upon the resale of the product to physicians, the taxpayer charges the physicians Illinois sales tax, unless a resale certificate is provided. As a result of the taxpayer's payment of sales tax to the suppliers, Illinois sales tax has been paid twice on the same product.

STATEMENT OF AUTHORITIES SUPPORTING TAXPAYER'S REQUEST

An Illinois Private Letter Ruling was issued on February 2, 1988 (ST 88-0080-PLR) to a taxpayer who proposed to take a deduction on the sales tax return to the extent that he paid tax to his supplier in error. That taxpayer purchased computers for resale, but the seller refused to accept his resale number as the taxpayer was not an authorized dealer in the purchased computer brand. The taxpayer charged and remitted sales tax on the ultimate sale of the computers to his customers. As a result of the double tax paid, the Department ruled that the taxpayer could take a deduction on his sales tax return for sales taxes erroneously paid to his supplier.

While no other authority exists relating to the situation of ABC, the taxpayer feels that the double sales tax on the product is not the intention of the laws of the State of Illinois. The taxpayer feels that the double taxation also results in a competitive disadvantage. A deduction allowed for sales tax erroneously paid would allow for the imposition of only one level of tax and not result in the taxation of purchases which otherwise qualify for the resale exemption.

STATEMENT OF AUTHORITIES CONTRARY TO TAXPAYER'S REQUEST

The Retailers' Occupation Tax Act, 35 ILCS 120/1 provides definitions and rules relating to the computation of sales tax. Under 35 ILCS 120/1, 'gross receipts' is defined as 'the total selling price or the amount of such sales.' 35 ILCS 120/1 goes on to define 'selling price' and the 'amount of sale':

'Selling price' or the 'amount of sale' means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal

property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include charges that are added to prices by sellers on account of the seller's tax liability under this Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act, or on account of the seller's tax liability under Section 8-11-1 of the Illinois Municipal Code, as heretofore and hereafter amended, or on account of the seller's tax liability under the County Retailers' Occupation Tax Act, or on account of the seller's tax liability under the Home Rule Municipal Soft Drink Retailers' Occupation Tax, or on account of the seller's tax liability under any tax imposed under the 'Regional Transportation Authority Act', approved December 12, 1973.

Retailers' Occupation Act does not provide for a deduction from gross receipts for sales tax paid to the supplier.

A review of the Regulations, specifically, Part 130 – Retailer's Occupation Tax, confirms that definition of gross receipts. The Regulations also do not provide a specific deduction for sales tax paid.

SPECIFIC RULING REQUESTED

The taxpayer is eligible to take a deduction for Illinois sales tax paid in error on the Form ST-1. The deduction will be available for prior returns still open under the statute of limitations and for future transactions.

Thank you for your consideration.

DEPARTMENT'S RESPONSE:

The Department declines to issue a Private Letter Ruling under Subsection (a)(3)(D) of Section 1200.110. 2 Ill. Adm. Code 1200.110(a)(3)(D). Based on the information provided, we understand that your company is making both sales for resale and retail sales. We believe the issue raised in your letter is sufficiently covered by Section 6 of the Retailers' Occupation Tax Act, 35 ILCS 120/6.

A retailer who incurs a Retailers' Occupation Tax liability on the sale of an item can take a credit against that liability for any Use Tax and any local Retailers' Occupation Tax reimbursements that he paid in error to a supplier registered to collect Illinois tax when he purchased that particular item. See 35 ILCS 120/6. However, this credit cannot exceed the amount of Retailers' Occupation Tax incurred by the retailer when he sells the item.

If a retailer has already filed a return and paid tax directly to the Department for which he could have claimed the credit, the retailer must file a claim to recover it. Again, only the entity that paid the tax to the Department can take a credit. A claim cannot exceed the amount of Retailers' Occupation Tax incurred by the retailer when he sells the item.

Regarding letter ruling ST 88-0080, please note for the future that Private Letter Rulings are only binding on the person to whom they were written. In addition, the Department's regulations at 86

Ill. Adm. Code 1200.110(e) provide that “[b]eginning July 1, 2002, every letter ruling is revoked on the date that is 10 years after the date of issuance of the ruling or July 1, 2002, whichever is later. No ruling may be cited or relied upon for any purpose after the date of its revocation, and the ruling will cease to bind the Department after the date of revocation. Taxpayers entitled to rely on the opinion contained in a particular letter ruling must apply for a new letter ruling prior to the aforementioned revocation date.”

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department’s Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110(b).

The statute of limitations for filing claims for credit is described in Section 130.1501(a)(4). The statute of limitations is 3 to 3 ½ years and expires in 6-month blocks.

Very truly yours,

Martha P. Mote
Associate Counsel

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